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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In re TOMMY O., a Person
Coming Under the Juvenile
Court Law.

B303643

(Los Angeles County
Super. Ct. No. 18CCJP01662A)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

MARIA G.,

Defendant and Appellant,

TOMMY O.,

Minor and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County. D. Brett Bianco, Judge. Affirmed.

Christopher R. Booth, under appointment by the Court of Appeal, for Defendant and Appellant.

Marissa Coffey, under appointment by the Court of Appeal,

for Minor and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles, Assistant County Counsel, and Peter Ferrera, Principal Deputy County Counsel for Plaintiff and Respondent.

Maria G., the mother of 11-year-old Tommy, appeals the juvenile court's denial of her Welfare and Institutions Code¹ section 388 petition seeking a modification of prior court orders and the termination of her parental rights pursuant to section 366.26. Tommy appeals the termination of parental rights. Mother contends that the court erred in denying her request for custody of Tommy or reinstatement of reunification services. Mother and Tommy contend the juvenile court erred in failing to apply the beneficial parental relationship exception to the statutory preference for adoption. (§ 366.26, subd. (c)(1)(B)(i).) We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Previous Dependency Proceeding

In 2015, the juvenile court found that Tommy came within its jurisdiction under section 300, subdivisions (a), (b), and (g), based on Mother's physical abuse of Tommy, domestic violence between the parents, Father's substance abuse and mental health issues, and Father's incarceration for attempted murder.²

¹ Unless otherwise indicated, all further statutory references are to the Welfare and Institutions Code.

² Father, who was incarcerated for the duration of the dependency proceedings, maintained visitation with Tommy but

While he was removed from Mother's custody, Tommy lived in a foster home and then with the paternal grandparents. Mother received family reunification services. In April 2016, the juvenile court returned Tommy to Mother's care. The juvenile court terminated jurisdiction in November 2016 with a family law order giving Mother sole legal and physical custody of Tommy.

B. January 2018 Report and Investigation

The Los Angeles County Department of Children and Family Services (Department) received a report in January 2018 that Mother had physically abused Tommy at the paternal grandparents' home. Mother reportedly yelled at Tommy and hit him in the chest, leaving a red mark. After refusing to go home with Mother, Tommy reported being afraid of Mother and worried that she might hit him at home. The Department scheduled two forensic examinations for Tommy, but Mother failed to take Tommy to the examinations. While it was investigating this referral, on March 11, 2018, the Department received an additional referral based on a new incident.

C. March 2018 Incident

On March 11, 2018, Tommy, Mother, and Mother's friend were at a tattoo parlor, and Mother gave Tommy permission to take \$5 from her car to purchase pizza at a nearby shop. After she discovered that Tommy had taken more money than she authorized, Mother became enraged. Mother grabbed Tommy by both ears, scratched his neck, and punched him repeatedly "all over his upper body." According to a witness, he cried in pain

elected not to participate in the dependency case. He is not a party to this appeal.

and screamed, “No, Mama!” Mother’s friend intervened to stop the attack and called 911.

The police observed marks on Tommy’s body. Witnesses confirmed Mother had punched Tommy multiple times. Tommy told the police that Mother grabbed and hit him when he took more money than he was permitted. He said he was scared of Mother, but denied she had previously abused him.

The police arrested Mother for inflicting cruel or inhuman corporal punishment on a child (Pen. Code, § 273d), and Tommy was taken into the Department’s custody. A medical examination revealed that Tommy had three reddish scratch marks on his right upper chest; a reddish linear scratch mark on his left shoulder; scratch marks on his right forearm; a reddish linear mark on his chin; multiple marks on his right and left neck attributable to being scratched by fingernails or being pulled by the collar of his shirt; scratches, red marks, and abrasions to his ears; swelling of one ear; and reddened areas on his right upper back and his face.

When interviewed by the Department, Mother denied hitting Tommy, and she suggested he was scratched while playing baseball. Mother also stated “he inflicted the ‘scratch himself.’” Mother later admitted, “I did not mean to hurt him. He was being stubborn and not listening to me.” She stated that “she lost control” and hit Tommy. Mother denied using drugs, but admitted drinking alcohol, stating “I relapsed and I drink when I am stressed out.”

Tommy initially told the Department Mother had not hit him and he had inflicted the injuries himself. He later admitted Mother had hit him, but said it was his fault for “being

stubborn.” Tommy blamed himself for Mother being incarcerated. He said, “It is my fault that my mom hit me. She is the only thing I have. I want to go back with her.”

D. *Dependency Petition and Jurisdiction/Disposition Hearing*

1. *Petition*

On March 13, 2018, the Department filed a dependency petition alleging juvenile court jurisdiction under section 300, subdivisions (a) (physical abuse) and (b) (general neglect). The Department alleged that Mother repeatedly struck Tommy with her fists, scratched his neck, and pulled his ears. Finding a substantial danger to his physical and emotional health, the juvenile court detained Tommy from Mother and placed him with his paternal grandparents.

2. *Department’s Investigation*

During his interview with the Department, Tommy continued to take the blame for Mother hitting him at the tattoo parlor. He claimed it was the first time she had hit him, but he also told the social worker that Mother needed “counseling for her anger.” When the social worker asked Tommy about his contact with his father in prison, Tommy became visibly anxious and urged her not to tell Father what had happened, because “then he won’t want to marry my mom.”

A therapist from Tommy’s elementary school reported that, prior to his detention, the school had been attempting to arrange counseling to address concerns about Tommy’s emotional regulation, his social relationships, and his anxiety, but Mother had not signed the consent form. Tommy had been having conflicts with other children and “demonstrated attention[-]

seeking behavior.” He seemed to be seeking a connection and support from adults at school.

The paternal grandmother told the Department that she was aware that Mother had physically abused Tommy, noting that Mother “used to twist his arm. She knew how to do it so it wouldn’t leave marks.” Tommy had disclosed to grandmother that he and Mother had been living in Mother’s car. The paternal grandmother reported that Mother was an alcoholic. The Department expressed concern about the hostile relationship between Mother and the paternal grandparents.

Mother contacted the Department the day she was released from jail, and she consistently communicated with the Department. She enrolled in parenting and anger management classes. At an April 2016 Child and Family Team meeting, she was cooperative and appeared motivated.

3. *April 2018 Hearing*

At the jurisdiction and disposition hearing on April 25, 2018, the juvenile court sustained the allegations of the petition and declared Tommy a dependent of the juvenile court. The court removed him from Mother’s custody and ordered reunification services for her. The court ordered Mother to undergo random drug and alcohol testing, a 26-week parenting education class, anger management classes, conjoint counseling with Tommy, and individual counseling to address “case issues, including child safety, physical abuse, anger management, child custody issues between her and the [paternal grandparents], and substance abuse issues.” The court also ordered Mother to take an active role in Tommy’s mental health services if and when his therapist deemed it appropriate.

The court granted Mother monitored visitation three times

per week for three hours, and gave the Department discretion to liberalize visits. The juvenile court also ordered Mother “not to discuss this case with the minor during her visits.” The court also set an appearance review hearing in three months, stating “We usually stick to a 6-month schedule, but we’re going to set it in three months to give [Mother] an opportunity to come back and demonstrate to the court that it would be appropriate to have Tommy released to [Mother].” The court advised Mother, “It would be expected based on the last time you were involved in the dependency matter in allegations of physical abuse that you would be further along in recognizing the inappropriateness of your behaviors. That hasn’t happened. And hopefully through these programs and through individual counseling, you’ll be able to not just participate in these programs but that you will learn something substantive from them and recognize this just isn’t appropriate.”

E. *Status Review Hearings*

1. *Three-Month Review Hearing*

Although she told the social worker she was participating in all services ordered by the juvenile court, Mother did not comply with her case plan. As of July 2018, Mother had not participated in drug testing, she had not enrolled in anger management or parenting classes, and she was not in counseling. At the review hearing on July 18, 2018, the juvenile court maintained the existing orders.

2. *Six-Month Review Hearing*

a. *Department’s reports*

In its six-month status review report filed on October 10, 2018, the Department reported that Mother remained “non-

compliant with her case plan.” She had missed all but one of her drug tests since reunification services began. She had enrolled in an anger management course, but she was discharged from the class when she failed to return after the third of the 10 sessions. Although the case plan required Mother to complete a 26-week parenting course, Mother had only attended five sessions of a 10-week program. In late September 2018, Mother enrolled in individual counseling, but she had not yet commenced therapy. She had participated in an appointment with the Multidisciplinary Assessment Team, and the Department considered this partial compliance with the order to take an active role in Tommy’s mental health services.

According to the Department, Mother’s housing and employment were unstable; she had moved approximately six times since the case began and lost many jobs. For example, Mother told the Department she was renting a room from a good friend, but the Department learned that the homeowner barely knew Mother. The homeowner soon asked Mother to leave because, at 1:00 a.m., Mother appeared to be under the influence and asked the homeowner’s minor son to purchase alcohol for her.

Tommy liked living with the paternal grandparents, who treated him very well. Tommy was closely bonded to his grandmother, and he often sat with her, kissed her, played with her hair, and looked to her for advice. Paternal grandfather took Tommy to Dodger games and an amusement park. He also registered Tommy for the local youth baseball team. Both grandparents attended Tommy’s school meetings and advocated for him when he experienced school problems. They treated Tommy as their child. When the mental health clinic to which

they were referred had a waiting list for counseling appointments, the grandparents arranged for Tommy to see the counselor he had worked with during the prior dependency proceeding. Tommy wanted to remain with his grandparents if he did not return to Mother's care.

Although Mother missed visits, Mother and Tommy were bonded. The Department reported that it was "clear that Tommy loves his mother and wants to be with her." During visits, Mother's affection for Tommy was obvious: she hugged him and called him loving nicknames. They shared meals, played board games, and laughed together. During visits, despite the juvenile court's order not to discuss case and the Department's repeated instructions, Mother displayed "a strong tendency to make false promises to Tommy," such as claiming that she had completed all her classes and he would be returned to her custody at the next court hearing. Although he was only 10 years old, Tommy adopted a parental role with Mother; for instance, he told Mother she had to stay in contact with the social worker "if you want me to go back home with you."

Tommy did not like his paternal aunt, who also lived in the grandparent's home. Tommy told Mother and the monitor that the paternal aunt had slapped him. Mother left the social worker a telephone message threatening the paternal aunt with physical violence. The Department instructed the grandparents not to speak about Mother or the case in Tommy's presence because their negative statements about Mother caused him anxiety and fear he would be removed from their home.

b. *October 2018 hearing*

On October 24, 2018, at the six-month review hearing (§ 366.21, subd. (e)), the juvenile court found that Mother's

progress toward alleviating the causes necessitating placement of Tommy had been “minimal,” and ordered another six months of services. In response to the Department’s request, because Mother had hindered Tommy’s visits with his Father, the court admonished Mother not to interfere with Tommy’s visitation with Father. The juvenile court scheduled the 12-month review hearing under section 366.21, subdivision (f) for April 17, 2019.

3. *Contested 12-Month Review Hearing*

a. *Department’s reports*

In its report filed on April 8, 2019, the Department reported that Tommy’s grandparents remained committed to caring for him and interested in adopting him if he did not reunify with Mother. Tommy consistently attended individual counseling. The counselor reported that Tommy “excelled in therapy,” and she told the Department, “[T]his is the most stable I’ve seen Tommy[] since the last time I worked with him [referring to the 2015 dependency case].” The social worker found Tommy to be respectful and forthcoming about school, therapy, and visits with his parents. As he matured, according to the social worker, Tommy was growing increasingly aware of Mother’s actions.

Mother and Tommy repeatedly expressed their love for each other, and Mother consistently demonstrated her love for Tommy with kisses and hugs. She brought food, gifts, and activities to visits. She encouraged him to do well in school and not to fight with other students. However, she continued to cancel visits and arrive late. Mother upset Tommy when she missed visits. During visits, Mother continued to make false promise to Tommy. The grandparents were consistent in

transporting Tommy for visits with Mother. In December 2018, she gave the Department a letter confirming she had completed a 26-week parenting skills program. She missed two drug tests, but her other eight tests were negative. She did not participate in any anger management classes. Mother was discharged from one counseling center in November 2018 because her participation was minimal. She enrolled in a new counseling program in November 2018 and attended two sessions. The counselor advised the Department that Mother “needs a lot of help.” Mother did not participate in therapy between December 2018 and March 2019. On March 11, 2019, she re-enrolled with the first counseling center, attending one session before the April 2019 hearing.

On December 28, 2018, Mother pleaded nolo contendere to violating Penal Code section 273a, subdivision (b),³ based on the incident at the tattoo parlor. The criminal court ordered Mother to serve 90 days in jail with credit for time served and placed Mother on probation for four years with various conditions, including completion of a 52-week parenting skills program. The criminal court also issued a three-year domestic violence protective order restraining Mother from contact with Tommy

³ Penal Code section 273a, subdivision (b) provides, “Any person who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of that child to be injured, or willfully causes or permits that child to be placed in a situation where his or her person or health may be endangered, is guilty of a misdemeanor.”

except as allowed by the Department or the juvenile court.

In its report for the 12-month review hearing, the Department advised the juvenile court that, while Mother loved Tommy very much, the Department recommended that the court terminate Mother's reunification services and that the court set a permanency hearing for adoptive planning. The Department noted that, not only had she received 12 months of services in the case, but also she had received services in the prior dependency case. The Department concluded that Mother had been given enough time "do what is necessary to regain custody of Tommy, and his need for permanency is more important than his hope that [M]other might someday become a responsible parent to him."

b. *April 2019 hearing*

At the contested 12-month review hearing (§ 366.21, subd. (f)) on April 17, 2019, Mother's counsel argued for further reunification services because Mother "completed a 26-week parenting class, [s]he drug tested clean on numerous occasions," and she enrolled in therapy. Tommy's counsel "submit[ed] on the Department's recommendation" to terminate reunification services. The juvenile court found, "the extent of progress made by Mother toward alleviating or mitigating the causes necessitating placement has been minimal." Therefore, after finding that "the resources provided to Mother [have] been quite thorough," the court ruled, "Mother has not demonstrated the capacity and ability to complete the objectives of her treatment plan and to provide for the child's safety, protection, physical and emotional well-being." The juvenile court terminated reunification services, and set the selection and implementation hearing under section 366.26 for August 7, 2019.

F. *May-December 2019*

1. *Department's Reports*

The Department reported that Tommy was “a happy and healthy child” who had adjusted well to living with his grandparents. He and his grandparents had developed “a close and loving relationship,” and the grandparents continued to meet Tommy’s “physical, mental, developmental, and emotional needs as they arise.” Tommy stated, “I like living with my grandparents. They’re stable and I know they take care of me.” Tommy said he was “happy” to be adopted by his grandparents. The Department also reported that Tommy had a stronger bond with his grandparents than with Mother. The paternal grandparents had been informed about both legal guardianship and adoption, and they wished to adopt Tommy. The grandparents were willing to maintain contact with Mother and Father. The Department recommended that the paternal grandparents adopt Tommy as a permanent plan.

Tommy’s counselor reported to the Department in July 2019 that she believed Tommy had achieved the objectives of his treatment and that his counseling should conclude. Both the counselor and the social worker observed that Tommy was capable of expressing his feelings. The Department found Tommy to be “very mature” for his age, noting that he often asked legal questions pertaining to his dependency proceedings. The Department reported in late July 2019 that Tommy had begun to “cope appropriately” with Mother’s frequent false promises. Tommy was happy that his paternal aunt had moved out of the family home, and he enjoyed receiving all his grandparents’ attention.

In June 2019, Mother submitted a certificate of completion

for an anger management program. After Mother attended several individual counseling sessions, her counselor told the Department in May 2019 that Mother was punctual and engaged, and they were establishing a therapeutic rapport. However, the following month, the counseling center refused to provide further services to Mother due to her intimidating and threatening confrontations with counselors concerning payment for missed visits.

The Department reported that Mother exhibited love for Tommy, hugging him and kissing his forehead at the beginning and end of visits. Tommy hugged and kissed Mother, and told her that he loved her. Mother bought food to visits, and they ate together. She talked with Tommy about school and about his grades, encouraging him to do well in school and not fight with other students. At one visit, Tommy and Mother wept together when Mother told him her father had passed away. At another visit, they played video games together and talked about how Tommy had spent Christmas and New Year's Day. Tommy appeared happy to spend time with Mother.

However, the Department reported that Mother continued to arrive late or not show up for visits, and she also continued discussing the case with him. Mother had an "emotional and angry outburst[]" during an October 2019 visit. During the visit, Mother whispered to Tommy that she had found an apartment for them. When the monitor reminded her not to whisper, she became "furious" and "snapp[ed]" at him, demanding his last name and saying she would file a complaint against him. At the conclusion of the visit, Mother demanded five additional minutes with Tommy. When the monitor reminded Mother of the designated end time for the visit; she again became irate and

“snapped” at him. Tommy reported, “I hope she’s not drinking again like before. I worry about her.” The Department had asked Mother to stop using a racial slur when referring to the monitor. The Department reported that Mother was “repeatedly inappropriate, rude, and disrespectful toward” the monitor. As a result, the monitor no longer felt comfortable monitoring the visits, and the social worker monitored the visits.

2. *Mother’s Section 388 Petition*

On July 31, 2019, Mother filed a section 388 petition seeking the return of Tommy to her custody, or, in the alternative, the reinstatement of family reunification services. In support of her petition, Mother provided a December 2018 letter from a service provider stating that she had completed a 26-week parenting program; a June 2019 letter from the same agency stating that she had completed 12 weeks of the anger management program; and a June 26, 2019 letter from a new counseling center stating that on that date Mother had “enrolled in 12 sessions” of individual therapy. Mother argued that the requested change was in Tommy’s best interest because “I have maintained a strong bond with my son. I have learned my lesson and would like an opportunity to raise my son. I am able to provide him with a loving, safe and nurturing home environment.”

The Department recommended that the juvenile court deny Mother’s section 388 petition. Although Mother had identified her completion of a parenting education course as evidence of changed circumstances, the Department observed that she actually had completed the course in 2018, months before the court terminated reunification services. The Department acknowledged that Mother had completed an anger management

course, but pointed out that “she still continues to display inappropriate parenting as demonstrated during her emotional and angry outbursts while on monitored visitation.” Although Mother had attended 10 sessions of individual therapy with a new counselor, as of November 2019, her counselor believed that, because of her depression and anxiety, Mother would benefit from a “higher level of care” than the agency could provide.

In a status review report, the Department advised the court that, on December 23, 2019, during a meeting with the Department and his grandparents, Tommy identified three personal goals: to “stop being bullied at school”; “to make my mom and my grandparents happy”; and “to stay with my grandparents.”

H. *Combined January 2020 Hearing*

At the combined hearing on January 8, 2020,⁴ the Department’s reports were admitted into evidence, as was Mother’s December 2019 letter confirming that she had enrolled in individual counseling with a new agency with a scheduled initial session on January 7, 2020. The Department’s social worker, Tommy, and Mother testified.

1. *Testimony*

a. *Social worker*

The social worker, Elaine Valenzuela, testified that

⁴ On August 7, 2019, the juvenile court set a hearing on Mother’s section 388 petition for November 6, 2019, and the court continued the section 366.26 hearing to that date. At the November 6 hearing, the court selected adoption as the permanent plan. The juvenile court then continued the section 388 and section 366.26 combined hearing to January 8, 2020.

Mother's section 388 petition should be denied because Mother had nearly one and one-half years to comply with the case plan, but she had made only minimal to partial progress, and because Mother behaved so inappropriately during visits, the Department had never been able to liberalize visitation. Valenzuela did not believe that Mother had addressed her anger management problems, the physical abuse of Tommy, or her substance abuse issues. She had made "very minimal" progress in individual counseling, and she had also threatened her counselors.

According to Valenzuela, a typical visit with Mother lasted two hours. Mother brought meals for Tommy and Mother to share. They played video games together on Mother's phone. Mother had begun bringing her Bible, and they prayed together at the end of their visits. Sometimes they spoke with Mother's adult sons, Tommy's half-brothers, who lived in Arizona. They took pictures together, and Tommy told her how he celebrated holidays. Valenzuela had suggested that Mother bring a board game or help Tommy with his homework, but she had not done so. The dynamic was "positive": they hugged and kissed each other, and they were "very happy" to see the other.

Valenzuela acknowledged that Tommy wanted to see Mother, but she testified that continued visits would be detrimental to him. Mother, Valenzuela testified, sent Tommy "confusing messages as far as going home with Mom, she's promise[d] she has the apartment, ma[de] false promises, and it confuses Tommy to the point where when he returns home, the grandparents have reported he will get upset. He's angry because he doesn't go home, he starts slamming door[s] and . . . talking back to the grandparents." Because Tommy still wanted to see Mother, Valenzuela recommended monthly one-hour visits

if Mother's parental rights were terminated. The grandparents were willing to allow these visits because they recognized the importance of Tommy's relationship with Mother.

Valenzuela testified that she had discussed the difference between legal guardianship and adoption with the paternal grandparents, and they wished to pursue adoption. She believed that the paternal grandparents were a good placement for Tommy because they had offered a "consistently stable placement" and treated him as if he was their son. Both grandparents were actively involved in Tommy's life.

b. *Tommy*

Tommy, who was now 11 years old, testified that he liked visiting with Mother and wanted visits to continue. Mother visited Tommy two or three times a month for two hours. During visits, they ate, played on Mother's phone, and read the Bible. He liked to give her hugs and kisses, and he told her often that he loved her. Tommy testified that during each visit he told Mother he loved her 10 or 11 times. Tommy testified that he would be "a little sad" if he could no longer see Mother because he loved her with all his heart.

Tommy knew the difference between legal guardianship and adoption. He understood that if a guardianship was established, his parents would remain his parents, "but I'm going to be living with my grandparents or my caretakers." His parents could "file something" to "have [him] probably go back to live with them." However, if he was adopted, "The parental rights of my biological mom and dad will be terminated, and then the rights will go with whoever wants to adopt me -- my grandparents." Tommy testified that he preferred to live with his grandparents "right now," so that Mother "can do all the stuff she

needs to do.”

When asked if he would want to live with either of his parents in the future, Tommy testified that he would want to live with his father “if he has all the stuff he needs and does classes, has a house, then I—yes—want to live with him.” He would also want to live with Mother in the future “[i]f she has everything done.” When asked whether he wanted his grandparents to have a legal guardianship or to adopt him, he responded, “At this point, adoption.” Tommy confirmed that he understood that if he was adopted he would not live with either parent in the future, and he testified, “I prefer being adopted by my grandparents. If something happens, I’ll be taken care of by my grandparents and not go [to] a foster home or somewhere else.”

Tommy stated that, before his testimony, he had spoken to his grandparents during the lunch hour that day about adoption and guardianship. Before he talked with them, he was leaning toward legal guardianship, and he had gone back and forth about what he wanted three times. Tommy denied that his grandparents had convinced him to choose adoption. He acknowledged he might change his mind in the future, “but right now, it’s adoption.”

c. Mother

Mother testified that before Tommy was removed from her custody, she had been his primary caregiver. At that time, she took him to school every morning, and she took him to medical appointments. On weekends, they went out for pizza and to the park, the arcade, and the paternal grandparents’ home. They used to go to the paternal grandparents’ house almost every weekend and for holidays. Mother wanted to be Tommy’s primary caregiver again. She would have liked to have

participated in more activities with him during the dependency case, but the restraining order prevented it.

Mother testified that she and Tommy were “very close”; he called her “mom,” “mommy,” and “mother.” Tommy enjoyed their visits. He greeted her with a hug and a kiss, and he told her that he loved her. During visits, they talked and read the Bible. They discussed school and how he was doing. She talked with Tommy about being bullied and gave him advice. They used to take walks around the building, but the Department would not let them do that anymore. She asked for liberalized visitation, but was told that the Department had insufficient staff to monitor the visits.

Mother believed that it would be harmful for Tommy to stop visiting with her because he would miss her. Tommy was well cared for by his paternal grandparents, but she was his mother and he missed her. Mother testified that she was employed as a registered dental assistant for the past 11 months. There was room in her home for Tommy.

When asked why she did not complete the classes she was ordered to take, she said that classes started before her work ended and “when [she] would ask for permission to leave, [she] would get terminated.” Mother claimed she had finished anger management, parenting classes, and individual counseling. “I did all of them already, completed, done. And then on my own, I decided to re-sign up again for individual counseling.” When asked why she had physically abused Tommy again, Mother testified, “I didn’t do it on purpose, Sir.”

2. *The Juvenile Court’s Rulings*

The juvenile court denied the section 388 petition because

Mother's circumstances had not changed and the relief requested was not in Tommy's best interest.⁵ The court ruled, "certainly, we're not in a position where the court could return the minor to Mother today. But in terms of giving her further reunification services, the law is pretty clear. We can't wait for parents to have that ah-ha! moment and that change in mentality and demonstrate they've learn[ed] from their programs." At this point in the proceedings, the court continued, "we have to focus our efforts on giving permanency and stability to the minor. So I am denying the [section] 388 [petition] on that basis."

Regarding the section 366.26 hearing, the juvenile court ruled, "I have come to the conclusion [that] although there is certainly evidence of parental bonding here—Mother loves her son, son[] loves Mother—they are clearly bonded just as the child is bonded to his grandparents. The court does believe that the benefit accruing to Tommy from that bond is outweighed by the physical and emotional benefit he would receive through the permanency and stability of adoption." After finding by clear and convincing evidence that Tommy was adoptable, the court ruled that adoption was in Tommy's best interest, found that no exception to adoption applied, and terminated Mother's parental rights.

Mother appeals the denial of her section 388 petition and the termination of her parental rights. Tommy appeals the

⁵ Tommy's counsel "join[ed] with the Department in regard to asking that the court deny the [section] 388 [petition] with regard to return to Mother today and with regard to more reunification services at this time." Counsel argued Mother had not shown that granting the petition was in Tommy's best interest.

termination of Mother's parental rights.

DISCUSSION

A. *The Juvenile Court Did Not Err in Denying Mother's Section 388 Petition*

1. *Applicable Law*

Section 388 provides for modification of juvenile court orders when the moving party presents new evidence or a change of circumstances and demonstrates that modification of the previous order is in the child's best interest. (*In re Jasmon O.* (1994) 8 Cal.4th 398, 415; *In re Stephanie M.* (1994) 7 Cal.4th 295, 317; *In re Y.M.* (2012) 207 Cal.App.4th 892, 919; see Cal. Rules of Court, rule 5.570(e); see also *In re Zacharia D.* (1993) 6 Cal.4th 435, 455 [“[s]ection 388 provides the “escape mechanism” that . . . must be built into the process to allow the court to consider new information”].) When, as here, a section 388 petition is filed after family reunification services have been terminated, the juvenile court's overriding concern is the child's best interest. (*In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317.) The parent's interests in the care, custody, and companionship of the child are no longer paramount; and the focus shifts to the needs of the child for permanency and stability. (*Ibid.*; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 960.)

“[B]est interests is a complex idea” that requires consideration of a variety of factors. (*In re Kimberly F.* (1997) 56 Cal.App.4th 519, 530; see *In re Jacob P.* (2007) 157 Cal.App.4th 819, 832-833.) In determining whether a section 388 petitioner has made the requisite showing, the juvenile court may consider the entire factual and procedural history of the case, including factors such as “the seriousness of the reason leading to the child's removal, the reason the problem was not resolved, the

passage of time since the child's removal, the relative strength of the bonds with the child, the nature of the change of circumstance, and the reason the change was not made sooner.” (*In re Mickel O.* (2011) 197 Cal.App.4th 586, 616; *In re Aaliyah R.* (2006) 136 Cal.App.4th 437, 446-447; *In re Justice P.* (2004) 123 Cal.App.4th 181, 188-189.)

If the juvenile court has ruled the parent failed to carry her initial burden to demonstrate new evidence or changed circumstances, the first step of the analysis, the question for the reviewing court is whether that finding is erroneous as a matter of law. (See *Almanor Lakeside Villas Owners Assn. v. Carson* (2016) 246 Cal.App.4th 761, 769 [where the issue on appeal turns on a failure of proof at trial, “the question for the reviewing court [becomes] “whether the evidence compels a finding in favor of the appellant as a matter of law””]; *In re Aurora P.* (2015) 241 Cal.App.4th 1142, 1156 [same].) We review the court's best interest determination, the second step, for abuse of discretion and may disturb the exercise of that discretion only in the rare case when the court has made an arbitrary or irrational determination. (*In re Stephanie M., supra*, 7 Cal.4th at p. 318.) We do not inquire whether substantial evidence would have supported a different order, nor do we reweigh the evidence and substitute our judgment for that of the juvenile court. (*Ibid.*) We ask only whether the juvenile court abused its discretion with respect to the order it actually made. (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

2. *The Juvenile Court Did Not Err in Finding No Changed Circumstances*

Three months after the juvenile court terminated reunification services based on her “minimal” progress in

alleviating the issues that led to the dependency, Mother filed a section 388 petition. Relying on her completion of an anger management program and her participation in individual counseling,⁶ Mother argues, “She made enormous changes in her life [and] her circumstances were not merely changing, but had changed” Mother’s evidence suggests that she had taken some steps to address her case plan; however, her limited progress did not qualify as a change in circumstances.

While Mother completed an anger management course and attended individual counseling, she did not demonstrate substantial progress. Mother’s counselor believed she needed “a higher level of care” than the counseling center could provide. Mother continued to erupt angrily. She engaged in threatening conduct toward her counselors, causing them to terminate Mother as a client. She became furious when the monitor instructed her not to whisper to Tommy during a visit. She also spoke angrily to the monitor who ended her visit on time instead of extending it as she desired.

By continuing to make false promises to Tommy during visits, Mother continued to violate the juvenile court’s order prohibiting case discussion during visits, disregard the social worker’s instructions, and ignore the impact of her comments on Tommy. She also continued to miss visits and arrive late. After reunification services were terminated, Mother did not provide

⁶ Mother quotes from a Department report, which stated “[d]uring this review period, it appears that [M]other completed parenting classes.” However, Mother’s completion of the parenting program in December 2018 was not a change in circumstances because Mother had completed the program before the juvenile court terminated her reunification services.

evidence of drug testing, even though it was part of her case plan. While Mother did participate in individual counseling and complete an anger management program, it was by no means clear from the evidence that Mother had demonstrated the kind of significant improvement to carry her burden as a matter of law. (See *In re Alayah J.* (2017) 9 Cal.App.5th 469, 482 [a parent seeking relief under section 388 must show changed circumstances]; *In re A.A.* (2012) 203 Cal.App.4th 597, 612 [“The change in circumstances” must be such that “the problem that initially brought the child within the dependency system must be removed or ameliorated. [Citation.] The change in circumstances or new evidence must be of such significant nature that it requires a setting aside or modification of the challenged order”]; *In re Mickel O., supra*, 197 Cal.App.4th at p. 615 [“[t]he change of circumstances or new evidence ‘must be of such significant nature that it requires a setting aside or modification of the challenged prior order’”].)

3. *The Court Did Not Abuse Its Discretion in Finding Placement with Mother or Reinstatement of Reunification Services Was Not in Tommy’s Best Interest*

Even assuming Mother had demonstrated a change in circumstances, the juvenile court did not abuse its discretion in finding Mother failed to show it would be in Tommy’s best interest for Mother to have custody of Tommy or reinstatement of reunification services. Mother fails to address how reinstatement of reunification services or changing custody would advance Tommy’s overriding interest in permanency and stability. (See *In re J.C.* (2014) 226 Cal.App.4th 503, 527 [a parent’s petition to reopen reunification efforts “must establish how such a change [of

circumstances] will advance the child's need for permanency and stability"].)

Mother's anger management and physical abuse issues were serious and long-standing, and they had proven not to be susceptible to easy amelioration. Mother had undergone reunification services and reunified with Tommy in the prior dependency proceeding. However, a year after jurisdiction was terminated in that proceeding, Mother had again physically abused Tommy. The juvenile court could have reasonably inferred that Mother did not show meaningful progress. Her "outbursts" alarmed Tommy, who told the social worker that he did not understand why she had behaved in this manner and he hoped she was not drinking again. Tommy feared that Mother would behave so badly that her visits would be discontinued. She never progressed past limited monitored visitation at the Department's office. She did accept responsibility for physically abusing her son, testifying that she had not abused Tommy "on purpose."

While Tommy was unquestionably bonded with Mother, his bond with his paternal grandparents was stronger. Tommy called his grandparents "mom" and "dad." The paternal grandparents met all of Tommy's needs and provided the stability he deserved. (See *In re Kimberly F.*, *supra*, 56 Cal.App.4th at p. 531 ["the disruption of an existing psychological bond between dependent children and their *caretakers* is an extremely important factor bearing on any section 388 motion"].) Just weeks before the January 2020 hearing, Tommy identified continuing to live with his grandparents as one of his main goals. At the hearing, Tommy understood the differences between adoption and legal guardianship, and he preferred to be adopted

by his grandparents. He testified, “If something happens, I’ll be taken care of by my grandparents and not go [to] a foster home or somewhere else.” In light of the seriousness and duration of Mother’s anger management and physical abuse problems, her minimal progress in addressing them, and Tommy’s need for stability and permanency, the juvenile court reasonably concluded that Mother did not demonstrate it was in Tommy’s best interest to reinstate reunification services or change custody to Mother.

While Mother undoubtedly loved her son, we cannot say that the juvenile court abused its discretion when it denied her section 388 petition. (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309-310 [following termination of reunification services and the setting of a section 366.26 hearing, the parent’s interest in reunification must yield to the child’s best interest in permanency and stability; “[c]hildhood does not wait for the parent to become adequate”]; *In re Aaliyah R.*, *supra*, 136 Cal.App.4th at p. 448 [“[t]he juvenile court quite properly looked to Aaliyah’s need for permanency and stability in denying mother’s petition for modification of its prior orders”]; see generally *In re Stephanie M.*, *supra*, 7 Cal.4th at p. 317 [“[i]n any custody determination, a primary consideration in determining the child’s best interests is the goal of assuring stability and continuity”].)

Relying on *In re Kimberly F.*, *supra*, 56 Cal.App.4th 519, Mother argues the juvenile court abused its discretion because the court “embraced the simple best interest test” by “‘simply compar[ing] the household and upbringing offered’ by the biological family with that of the caretakers.” However, there is no indication in the juvenile court’s ruling that it so narrowly

evaluated Tommy's best interest. The court, after hearing counsel's argument on the section 388 petition, acknowledged that "those are all the facts that the court is considering." The court correctly indicated Tommy's preference to be adopted was "just one factor in a big picture."⁷ The court's comment directed to Tommy reflected a concern for Tommy's well-being because he loved his grandparents and Mother. Based on all the evidence before the court at the January hearing, the juvenile court reasonably inferred that Mother did not make the necessary progress. (See *In re Jasmon O.*, *supra*, 8 Cal.4th at pp. 415-416 ["[t]he [section 388] petition is addressed to the sound discretion of the juvenile court and its decision will not be disturbed on appeal in the absence of a clear abuse of discretion"]; see generally *In re Stephanie M.*, *supra*, 7 Cal.4th at pp. 318-319 ["[t]he appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court"].)

⁷ After it had ruled on the section 388 petition and heard argument regarding termination of Mother's parental rights, the juvenile court stated, "I just want to make sure Tommy understands as an 11 year old that he's not responsible for what's happening today. And whether we go in this direction or that direction, his wishes and his statements—although I certainly heard them and appreciate them—that's just one factor in a big picture that the court has to consider. So I don't want you leaving thinking that anything you've said or done is responsible for the direction that we're going to go here."

B. *The Juvenile Court Did Not Err in Terminating Mother's Parental Rights*

1. *Governing Law and Standard of Review*

The purpose of a section 366.26 hearing is “to provide stable, permanent homes” for dependent children. (§ 366.26, subd. (b).) Once the court has decided to end reunification services, the legislative preference is for adoption. (§ 366.26, subd. (b)(1); *In re Celine R.* (2003) 31 Cal.4th 45, 53 “[I]f the child is adoptable . . . adoption is the norm. Indeed, the court must order adoption and its necessary consequence, termination of parental rights, unless one of the specified circumstances provides a compelling reason for finding that termination of parental rights would be detrimental to the child”]; see *In re Marilyn H.*, *supra*, 5 Cal.4th at p. 307 [once reunification efforts have been found unsuccessful, the state has a “compelling” interest in “providing stable, permanent homes for children who have been removed from parental custody,” and the court must “concentrate its efforts . . . on the child’s placement and well-being, rather than on a parent’s challenge to a custody order”]; see also *In re Breanna S.* (2017) 8 Cal.App.5th 636, 645-646; *In re Noah G.* (2016) 247 Cal.App.4th 1292, 1299-1300.)

Section 366.26 requires the juvenile court to conduct a two-part inquiry at the selection and implementation hearing. First, the court determines whether there is clear and convincing evidence the child is likely to be adopted within a reasonable time. (*Cynthia D. v. Superior Court* (1993) 5 Cal.4th 242, 249-250; *In re D.M.* (2012) 205 Cal.App.4th 283, 290.) Then, if the court finds by clear and convincing evidence the child is likely to be adopted, the statute provides “the court must terminate parental rights” unless the parent opposing termination can

demonstrate one of the enumerated statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B); see *Cynthia D. v. Superior Court*, *supra*, 5 Cal.4th at pp. 250, 259 [when the child is adoptable and declining to apply one of the statutory exceptions would not cause detriment to the child, the decision to terminate parental rights is “relatively automatic”].)

One of the statutory exceptions to termination is contained in section 366.26, subdivision (c)(1)(B)(i), which permits the court to order some other permanent plan if “[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” The exception requires the parent to prove both that he or she has maintained regular visitation and that his or her relationship with the child ““promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.”” (*In re Marcelo B.* (2012) 209 Cal.App.4th 635, 643; accord, *In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 646; *In re Amber M.* (2002) 103 Cal.App.4th 681, 689; see *In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 [“the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer”].)

A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption. (See *In re Angel B.* (2002) 97 Cal.App.4th 454, 466 [“[a] biological parent who has failed to reunify with an adoptable child may not derail an adoption merely by showing the child would derive *some* benefit from continuing a relationship maintained during periods of visitation with the parent”].) “No matter how loving and frequent the

contact, and notwithstanding the existence of an ‘emotional bond’ with the child, ‘the parents must show that they occupy “a parental role” in the child’s life.’” (*In re K.P.* (2012) 203 Cal.App.4th 614, 621; *In re I.W.* (2009) 180 Cal.App.4th 1517, 1527.) Factors to consider include ““[t]he age of the child, the portion of the child’s life spent in the parent’s custody, the ‘positive’ or ‘negative’ effect of interaction between parent and child, and the child’s particular needs.”” (*In re Marcelo B., supra*, 209 Cal.App.4th at p. 643.) Moreover, “[b]ecause a section 366.26 hearing occurs only after the court has repeatedly found the parent unable to meet the child’s needs, it is only in an extraordinary case that preservation of the parent’s rights will prevail over the Legislature’s preference for adoptive placement.” (*In re Jasmine D., supra*, 78 Cal.App.4th at p. 1350.)

The parent has the burden of proving the statutory exception applies. (*In re Breanna S., supra*, 8 Cal.App.5th at p. 646; accord, *In re I.W., supra*, 180 Cal.App.4th at p. 1527.) The court’s decision a parent has not satisfied this burden may be based on any or all of the component determinations—whether the parent has maintained regular visitation, whether a beneficial parental relationship exists, and whether the existence of that relationship constitutes “a compelling reason for determining that termination would be detrimental to the child.” (§ 366.26, subd. (c)(1)(B); see *In re K.P., supra*, 203 Cal.App.4th at p. 622; *In re Bailey J.* (2010) 189 Cal.App.4th 1308, 1314.) We review for abuse of discretion the determination whether the benefit to the child derived from preserving parental rights is sufficiently compelling to outweigh the benefit achieved by the permanency of adoption. (*In re K.P.*, at pp. 621-622; *In re*

Bailey J., at pp. 1314-1315.)⁸

2. *The Court Did Not Abuse Its Discretion in Deciding That the Benefit to Tommy from Preserving Parental Rights Was Outweighed by the Benefit of Permanency Through Adoption*

Mother argues that, because of the “exceptionally positive accounts of the visits” and the “extraordinarily strong bond of love” between herself and Tommy, the termination of her parental rights would cause him “great harm.” Tommy joins in Mother’s argument, contending that, because he was 11 years old and Mother had been his primary caretaker for most of his life, legal guardianship would be the best permanent plan for him.

The juvenile court acted within its discretion in concluding, “although there is certainly evidence of parental bonding here . . . the court does believe that the benefit accruing to Tommy from that bond is outweighed by the physical and emotional benefit he would receive through permanency and stability of adoption.” While Tommy clearly loved Mother, enjoyed their twice-a-month monitored visits, wanted visits to continue, and hoped someday to be able to return to Mother if she addressed her problems, the record contains ample evidence from which the juvenile court could have reasonably concluded that their relationship was not so substantial that its termination would greatly harm Tommy.

⁸ The California Supreme Court granted review in *In re Caden C.*, S255839, on July 24, 2019, and asked the parties to brief and argue the following issues: “(1) What standard of review governs appellate review of the beneficial parental relationship exception to adoption? (2) Is a showing that a parent has made progress in addressing the issues that led to dependency necessary to meet the beneficial parental relationship exception?”

(*In re Breanna S.*, *supra*, 8 Cal.App.5th at p. 648 [evidence that children enjoyed mother's monitored visits fell "far short of demonstrating a substantial emotional attachment that would cause the children to suffer great harm if severed."]; *In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 [termination of mother's parental rights affirmed despite evidence the child and mother were emotionally attached and well-bonded]; *In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 575 [exception applies only if the severance of the parent-child relationship would "deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed"].)

Tommy preferred living with his grandparents and predicted that he would be "a little sad" if he could no longer see Mother. Mother's behavior at visits negatively impacted Tommy's well-being as did Mother's missed visits. Her angry outbursts left Tommy worried that Mother was drinking again, and he feared that Mother would behave in such a way as to end their visits. The juvenile court could have reasonably inferred that Mother failed to acknowledge her anger and abuse issues. She did not progress past twice-a-month monitored visitation at the Department's office.

When the juvenile court balanced the benefit of adoption and the possible detriment from terminating Mother's parental rights, there was no dispute that the paternal grandparents consistently have provided Tommy with a safe and nurturing environment in which he is happy and thriving. Through the therapy his grandparents arranged, Tommy stabilized and matured. According to his therapist, in his grandparents' care Tommy was the most stable he had been in years; he reached his treatment goals and completed therapy. The paternal

grandparents loved Tommy as their child, and they were committed to adopting him. Tommy was bonded with his grandparents; in fact, his bond with them was reported to be stronger than his bond with Mother.

There was evidence Mother and Tommy loved each other, but the juvenile court did not abuse its discretion when it determined that any detrimental impact from the severance of their parent-child relationship was outweighed by the benefits to Tommy from adoption. (See *In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 [parent-child relationship exception requires parent to demonstrate “relationship remained so significant and compelling in [the child’s] life that the benefit of preserving it outweighed the stability and benefits of adoption”]; *In re K.P.*, *supra*, 203 Cal.App.4th at p. 623 [even if mother and child had a solid parental bond, the court did not abuse its discretion in finding mother had failed to satisfy the (c)(1)(B)(i) exception; “[w]e cannot say that the juvenile court abused its discretion when it concluded that any detrimental impact from severance” of that relationship was outweighed by the benefits that would come from adoption]; *In re Bailey J.*, *supra*, 189 Cal.App.4th at p. 1315 [juvenile court determines “the importance of the relationship in terms of the detrimental impact that its severance can be expected to have on the child and to weigh that against the benefit to the child of adoption”] (italics omitted).)

Mother’s reliance on *In re Scott B.* (2010) 188 Cal.App.4th 452, *In re S.B.* (2008) 164 Cal.App.4th 289, *In re Jerome D.* (2000) 84 Cal.App.4th 1200, and *In re Brandon C.* (1999) 71 Cal.App.4th 1530, as examples of circumstances in which the benefit of maintaining a parent-child relationship outweighed the benefit of

adoption, is misplaced. Each case involved facts that demonstrated that parent-child relationship should not be terminated because of harm to the child.⁹ For example, in *In re Scott B.*, the child “had consistent weekly visits” with his mother, repeatedly insisted that he live with her, and the social worker stated the child would suffer detriment if his relationship with mother was disrupted. (*In re Scott B.*, *supra*, at pp. 471-472.) Because the child’s “emotional make up [would] not enable him to endure interruption of his long-standing frequent visits with [his mother],” the court in *In re Scott B.* identified “a danger not worth taking.” (*Ibid.*) Therefore, “to avoid that serious emotional and developmental setback” to a child in a “precarious emotional state,” the court reversed the order selecting adoption as the permanent plan and terminating the mother’s parental rights. (*Id.* at pp. 455, 472.)

In *In re S.B.*, *supra*, 164 Cal.App.4th 289, the father, a veteran with combat-related post-traumatic stress disorder and health problems, had parented his daughter in a patient and loving manner, but suffered from a substance abuse problem. (*Id.* at pp. 293-294, 298.) When his daughter was removed from his custody, he “immediately recognized that his drug use was untenable, started services, maintained his sobriety, sought medical and psychological services, and maintained constant and regular visitation with [his daughter].” (*Id.* at p. 298.) The

⁹ In *Brandon C.*, *supra*, 71 Cal.App.4th 1530, the court affirmed the juvenile court’s ruling that termination of parental rights would be detrimental to the child, holding that the evidence of benefit from continued contact between a mother and her children was “sufficient to support the court’s decision to order guardianship.” (*Id.* at pp. 1537-1538.)

father maintained consistent and appropriate visits with the child throughout the dependency proceedings, and he complied with “every aspect” of his case plan; his devotion to her was constant; and he put her safety and needs above his own. (*Id.* at pp. 298, 300.) Under those circumstances, “the only reasonable inference [was] that [the child] would be greatly harmed by the loss of her significant, positive relationship” with her father. (*Id.* at p. 301.)¹⁰

The child in *In re Jerome D.*, *supra*, 84 Cal.App.4th 1200, had unsupervised overnight visits with his mother, who was the only woman in his life with whom he had a beneficial parent-child relationship, and there was insufficient evidence to support the court’s finding that the child was adoptable. (*Id.* at pp. 1206-1207.) A psychologist concluded “if the relationship were severed [the child] would grieve and could experience emotional and behavioral difficulties, and that continued contact [with his mother] would benefit him developmentally.” (*Id.* at p. 1207.)

Here, in contrast, there was no evidence that Tommy was in a precarious emotional state or that his development would be set back if the court terminated Mother’s parental rights. The evidence showed that he prospered in his grandparents’ care. Mother did not “immediately” acknowledge her issues that led to

¹⁰ In a subsequent decision, the same court emphasized that “*S.B.* is confined to its extraordinary facts.” (See *In re C.F.* (2011) 193 Cal.App.4th 549, 558-559) [“we once again emphasize that *S.B.* is confined to its extraordinary facts. It does not support the proposition that a parent may establish the parent-child beneficial relationship exception by merely showing the child derives some measure of benefit from maintaining parental contact”].)

dependency or complete every aspect of her case plan. Further, there is no dispute that Tommy was adoptable and Tommy has strong positive relationships with his grandparents.

Finally, Mother and Tommy argue that the juvenile court could have given Tommy stability while maintaining Mother's relationship with him by selecting a legal guardianship as the permanent plan. However, at the section 366.26 hearing, if the juvenile court finds by clear and convincing evidence that the child is likely to be adopted, it is required to terminate parental rights unless one of the statutory exceptions applies. (§ 366.26, subd. (c)(1)(A) & (B); *In re S.B.* (2009) 46 Cal.4th 529, 532 ["[i]f adoption is likely, the court is required to terminate parental rights, unless specified circumstances compel a finding that termination would be detrimental to the child"].) In light of Tommy's undisputed adoptability and the court's determination that the parental benefit exception did not apply here, the juvenile court could not select legal guardianship as a permanent plan for Tommy. (See *In re Teneka W.* (1995) 37 Cal.App.4th 721, 728 ["The Legislature has decreed . . . that guardianship is not in the best interests of children who cannot be returned to their parents. These children can be afforded the best possible opportunity to get on with the task of growing up by placing them in the most permanent and secure alternative that can be afforded them." [Citation.] A guardianship is 'not irrevocable and thus falls short of the secure and permanent placement intended by the Legislature'"].)

In sum, the juvenile court's finding that the benefits to Tommy of adoption outweighed those from continuing Mother's parental rights was within its discretion.

DISPOSITION

The juvenile court's January 8, 2020 orders are affirmed.

DILLON, J.*

We concur:

PERLUSS, P. J.

SEGAL, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.